

ORIGINAL
RECEIVEDLAW OFFICES
HALEY, BADER & POTTS

4350 NORTH FAIRFAX DR., SUITE 900

ARLINGTON, VIRGINIA 22203-1633

TELEPHONE (703) 841-0606

FAX (703) 841-2345

POST OFFICE BOX 19006

WASHINGTON, D.C. 20036-9006

TELEPHONE

(202) 331-0606

HENRY A. SOLOMON
ADMITTED IN VA. AND D.C.

MAY - 3 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYOUR FILE NO.
0937-109-71

May 3, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

**Reference: Sunkissed Broadcasting, Inc.
Beach TV Properties, Inc.
MM Docket No. 92-307**

Dear Ms. Searcy:

We submit an original and six copies of a **Joint Petition for Approval of Settlement Agreement, Grant of the Application of Beach TV Properties, Inc., and Dismissal of the Application of Sunkissed Broadcasting, Inc.**

Please note that our client, Beach TV Properties, Inc., has not yet signed either the Agreement or the Joint Declaration attached thereto. We are authorized to represent that principals' signatures will be affixed this week. We are submitting the settlement papers at this time in order to expedite the process, and will promptly supplement these submissions with the Agreement signature page and the fully executed Joint Declaration.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

**BEACH TV PROPERTIES, INC.
SUNKISSED BROADCASTING, INC.**By: 

Henry A. Solomon

RECEIVED

MAY - 3 1993

Before The
Federal Communications Commission

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. <u>92-307</u>
)	
SUNKISSED BROADCASTING, INC.)	File No. BPCT-910617KE
)	
BEACH TV PROPERTIES, INC.)	File No. BPCT-910825KE
)	
For Construction Permit for a New)	
Commercial Television Station on)	
Channel 46 in Panama City Beach,)	
Florida)	

TO: Honorable Joseph P. Gonzalez

**JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT,
 GRANT OF THE APPLICATION OF BEACH TV PROPERTIES, INC.,
 AND DISMISSAL OF THE APPLICATION OF SUNKISSED
 BROADCASTING, INC.**

Beach TV Properties, Inc. ("Beach") and Sunkissed Broadcasting, Inc. ("Sunkissed"), applicants in the above-captioned proceeding, by their attorneys, hereby petition for approval of the attached Agreement, grant of Beach's application and dismissal of Sunkissed's application. In support hereof the following is shown:

1. Beach and Sunkissed are competing applicants for a full service television construction permit on Channel 46, Panama City Beach, Florida, and are presently involved in a consolidated comparative hearing. The parties have entered into the attached settlement Agreement. Pursuant to that Agreement, Beach has agreed to reimburse Sunkissed for Sunkissed's reasonable and prudent application preparation and prosecution costs up to thirty-six thousand five hundred

dollars (\$36,500.00), and has agreed that if it decides to offer its unbuilt Channel 46 construction permit for sale, it will afford Sunkissed the first opportunity to offer to acquire the authorization. No monetary consideration other than that stated in the Agreement will be paid to

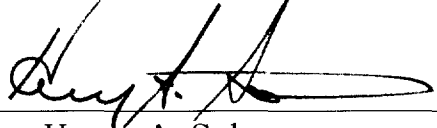
Beach's Request For Reporting Waiver

4. Beach respectfully requests a waiver of 47 C.F.R. §73.1620(g) (reporting requirement re comparative proposals). This waiver is sought under the authority of §73.1620(g)(3).

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that the attached settlement Agreement be approved, the application of Beach TV Properties, Inc., be granted, and that the application of Sunkissed Broadcasting, Inc., be dismissed.

Respectfully submitted,


BEACH TV PROPERTIES, INC.

By: 
Henry A. Solomon
Melodie A. Virtue

Its Attorneys

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

SUNKISSED BROADCASTING, INC.

By: 
Robert S. Stone
Its Attorney

McC Campbell & Young
P.O. Box 550
Knoxville, TN 37901-0550
(615) 637-1440

April 30, 1993

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into by and between Beach TV Properties, Inc. (“Beach”) and Sunkissed Broadcasting, Inc. (“Sunkissed”).

WITNESSETH:

WHEREAS, Beach and Sunkissed filed mutually-exclusive applications with the Federal Communications Commission (“FCC” or “Commission”) for a new television station (the “Station”) to operate on Channel 46 at Panama City Beach, Florida (File No. BPCT-910825KE and File No. BPCT-910617KE, respectively);

WHEREAS, both applications have been designated for a consolidated comparative hearing;

WHEREAS, Beach and Sunkissed wish to resolve the state of mutually exclusivity with respect to their applications and to terminate the proceedings at the FCC with respect to their applications.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound, the parties agree as follows:

1. Joint Request for Approval of Agreement. Within five (5) days

2. **Dismissal of the Sunkissed Application.** Concurrently with the filing of the Joint Request, Sunkissed agrees to request dismissal of its application, File No. BPCT-910617KE, such dismissal to be contingent upon FCC approval of the Agreement (“Dismissal Request”).

3. **Consideration.** In consideration of the dismissal of the Sunkissed application, Beach agrees and covenants to Sunkissed as follows:

For purposes of this Paragraph 3, the term “Beach” is expressly understood to mean Beach TV Properties, Inc., a Florida corporation; its successors-in-interest; and its principals, Byron J. (“Jud”) Colley and Tonita (“Toni”) Davis; and any entity controlled and substantially owned by the principals of Beach or either of them. The term “Sunkissed” is expressly understood to mean Sunkissed Broadcasting, Inc., a Georgia corporation; its successors-in-interest and its principals Donald L. Jones, Kenneth L. Bazzle and William H. Sanders, and any entity controlled and substantially owned by the principals of Sunkissed or any of them. Except as otherwise specifically permitted pursuant to this Agreement, the rights and obligations of Beach and Sunkissed under this Paragraph 3 may not be assigned.

Further, for the purposes of this Paragraph 3, the term “Station” is expressly understood to refer to an Unbuilt Construction Permit for Channel 46.

(a) *Reimbursement of Sunkissed.* Beach agrees to pay to Sunkissed THIRTY SIX THOUSAND FIVE HUNDRED DOLLARS (\$36,500.00) (the “Settlement Price”) or such lesser amount that the Commission may approve for the reimbursement of Sunkissed’s legitimate and prudent expenses incurred in the preparation and prosecution of Sunkissed’s application (File No. BPCT-910617KE). The payment to Sunkissed is expressly conditioned upon the dismissal with prejudice of Sunkissed’s application and issuance of a final order granting Beach’s application (File No. BPCT-910825KE). A “final order” is an Order (or Orders) of the Presiding FCC Administrative Law Judge

which is not reversed, stayed, set aside, enjoined or suspended and with respect to which no requests for administrative or judicial review or stay are pending, and as to which the time for filing such a petition or appeal, or for the FCC to set aside its consent on its own motion, has expired. Payment of the Settlement Price shall be made within five (5) business days after the date on which the Order (or Orders) referred to herein becomes a final order.

Sunkissed shall include with the Joint Request a showing that the Settlement Price does not exceed its legitimate and prudent out-of-pocket expenses incurred in the preparation and prosecution of its application.

(b) Prior Notice of Intention to Sell. If, during the period commencing on the date of Commission approval of this Agreement and ending on the date on which Beach begins program tests on Channel 46 (as defined and permitted under Section 73.1620 of the Commission's Rules or any successor regulation of comparable effect), Beach decides to sell the Station, then Beach shall give Sunkissed fifteen (15) days written notice of its intention to sell prior to listing the Station for sale with any broker, making any announcement to the general

(c) *Certain Transactions Exempted.* The right granted to Sunkissed in (b), shall not apply to any sale of the Station to the children of Byron J. Colley and/or Tonita Davis, or to any trust or trusts created for the benefit of the children of either of them, or to any sale or transfer which is not, under the rules, regulations and policies of the FCC, a sale subject to Section 309(b) of the Communications Act or any successor law of comparable effect; provided, however, that the provisions of this Agreement shall be binding upon any assignee of Beach pursuant to such sale.

4. **Cooperation.** Beach and Sunkissed shall cooperate and use their respective best efforts in the preparation and filing of all Commission filings and related documents that shall be necessary or appropriate to consummate the transactions contemplated by this Agreement. The parties hereto shall cause all such filings to be made as soon as reasonably practicable following the execution of this Agreement, and each of them shall prosecute such filings with all reasonable diligence and otherwise cooperate with each other, take no action adverse to one another and use their best efforts to obtain the requisite Commission consent and approval promptly so that a final order may be obtained at the earliest possible date. Notwithstanding this Paragraph 4, neither Beach nor Sunkissed shall be required to defend this Agreement in a hearing or to appeal any denial of this Agreement to the appropriate courts.

5. **Expenses.** Except as otherwise provided herein, each party to this Agreement shall bear its own expenses in relation to this Agreement, including preparation of this Agreement, the filings and transactions contemplated thereby to obtain approval of this Agreement, grant of the Beach application and dismissal of the Sunkissed application.

6. **FCC Approval.** This Agreement is expressly entered into subject to approval by the FCC, and shall be void unless the Commission shall approve it. Should the Commission refuse to approve this Agreement, then the parties hereby agree that they will immediately make good faith efforts to resolve each Commission objection in order to obtain Commission approval. In the event that the Commission, for any reason, has not approved this Agreement within two-hundred-seventy (270) days from the date hereof, then either party hereto that is not in default hereunder, upon written notice to the other, may terminate this Agreement.

7. **Binding Agreement.** This Agreement shall be binding upon the parties hereto, their heirs, executors, personal representatives, successors and assigns.

8. **Section Headings.** All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section or paragraph.

9. **Counterparts and Effective Date.** This Agreement may be executed in counterparts and both so executed shall constitute one Agreement, binding on both of the parties hereto, notwithstanding that both of the parties are not signatory to the original or the same counterpart. This Agreement shall be effective as of the date on which the later counterpart is executed.

10. **Entire Agreement.** This Agreement contains the entire understanding between the parties and supersedes all prior written or oral Agreements among them respecting the subject matter hereof, unless otherwise provided herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement which are not

fully expressed herein or in attachments hereto. By signing below, the parties hereto acknowledge that they have read this Agreement and are fully cognizant of each provision herein.

11. **Interpretation.** This Agreement shall be construed and enforced in accordance with Florida law.

12. **Authority.** Each signatory to this Agreement warrants and represents that it has full legal authority to enter into, execute and carry out this Agreement.

13. **Choice of Law and Remedies on Default.**

(a) This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Georgia without regard to the choice of law rules utilized in that jurisdiction.

(b) Any litigation seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought in a court of the State of Georgia located in the City of Atlanta that has jurisdiction over the matter in question, or in the United States District Court for the Northern District of Georgia, Atlanta Division, if it has or can acquire jurisdiction. The parties agree that those courts shall be the exclusive forums for all such actions and hereby waive any objection to venue in those courts based on the doctrine of *forum non conveniens* or otherwise. The parties further agree that they may make service of process by registered mail or certified mail (return receipt requested) at their addresses indicated below; service thus made shall be deemed to be completed upon receipt by the party to whom process is directed. Nothing herein shall affect either party's right to serve legal process in any other manner permitted by law.

14. **Notice.** Any notice required hereunder shall be in writing and any payment, notice or other communication, unless otherwise expressly provided herein, shall be deemed given when delivered personally, or mailed by certified mail or registered mail, postage prepaid, with return receipt requested, to the following addressee:

If to Beach:

Mr. Jud Colley
Beach TV Properties, Inc.
8317 Front Beach Road, Suite 23
Panama City, FL 32407

With copies to:

Henry A. Solomon, Esq.
Haley, Bader & Potts

16. **Amendment.** This Agreement may be amended only in writing signed by the party against whom enforcement is sought.

17. **Effective Date.** This Agreement shall become effective on the date of execution by the party who signs later.

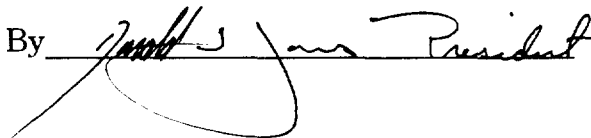
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date last below written.

BEACH TV PROPERTIES, INC.

By _____

Signed this day of April, 1993

SUNKISSED BROADCASTING, INC.

By  President

Signed this ²⁶ day of April, 1993

DECLARATION

I, Donald L. Jones, do hereby declare under penalty of perjury that the following is true and correct:

1. I am president of Sunkissed Broadcasting, Inc. ("SBI"), applicant for a construction permit for a new television station on Channel 46 at Panama City Beach, Florida (BPCT-910617KE).

2. No consideration has been or will be given to or received by SBI from competing applicant Beach TV Properties, Inc. ("Beach") to obtain the dismissal of SBI's application, except as expressly provided for in the Settlement Agreement filed herewith. The attached itemized accounting of expenses for which SBI is seeking reimbursement includes only a portion of those expenses reasonably incurred by SBI in preparing, filing, prosecuting, and/or settling SBI's application.

3. SBI's application was not filed for the purpose of reaching or carrying out a settlement agreement or any other such agreement with Beach or any other person or entity.

4. The Settlement Agreement is in the public interest because it resolves the mutual exclusivity between the applications of Beach and SBI for a new television station to serve Panama City Beach, Florida, thereby expediting the initiation of new broadcast service to the community of Panama City Beach, Florida and surrounding areas.

Executed on: APR. 27, 1993


Donald L. Jones

ITEMIZED ACCOUNTING OF EXPENSES

Filing Fee	\$2,535.00
Hearing Fee	6,760.00
Settlement Payment to former applicant, Bowers Network, Inc.	9,105.70
Payments to McCampbell & Young, P.C. for legal fees and advanced costs	21,498.84
Total:	\$39,899.54

DECLARATION

I, Robert S. Stone, do hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney licensed by the State of Tennessee and a shareholder in the law firm of McCampbell & Young, P.C., located in Knoxville, Tennessee. McCampbell & Young, P.C. has acted as communications counsel to Sunkissed Broadcasting, Inc. ("SBI"), applicant for construction permit for a new television station on Channel 46 at Panama City Beach, Florida (File No. BPCT-910617KE).

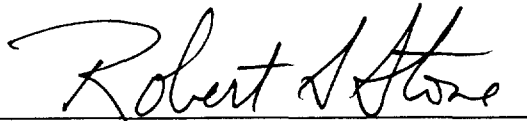
2. Prior to filing its application with the Commission on June 17, 1991, SBI retained McCampbell & Young, P.C. to represent it in preparing, filing, and prosecuting its application. McCampbell & Young, P.C. provided research, consultation and advice to the client in connection with the preparation and filing of SBI's application. McCampbell & Young, P.C. also assisted SBI in maintaining the accuracy of its application while pending before the Commission, reviewing and analyzing competing applications filed by Bowers Network, Inc. and Beach TV Properties, Inc., and in monitoring Commission records for filings by competing applicants prior to designation. McCampbell & Young, P.C. represented SBI in negotiating a settlement with Bowers Network, Inc. prior to designation and in prosecuting SBI's application after its application was designated for hearing with the competing application of Beach TV Properties, Inc. Numerous pleadings and discovery exchanges were prepared and argued before the Commission. Expenses incurred by McCampbell & Young, P.C. for the benefit of SBI include long-distance telephone charges, regular postage, photocopies, Federal Express charges,

and travel to Washington, D.C. in order to attend the prehearing conference before the Presiding Officer on March 12, 1993.

3. All work performed by McCampbell & Young, P.C. for SBI's benefit has been performed on an hourly basis at a rate charged to all other clients of this office, ranging from \$100.00 to \$130.00 per hour. The undersigned hereby certifies that the charges described herein represent fees and expenses legitimately and prudently incurred in the prosecution and settlement of the application of Sunkissed Broadcasting, Inc. for Panama City Beach, Florida Channel 46. The total amount charged Sunkissed Broadcasting, Inc. by McCampbell & Young, P.C. for the services described above through March 31, 1993 is \$21,498.84.

DATED this 21st day of April, 1993.

MCCAMPBELL & YOUNG, P.C.

By: 
Robert S. Stone

Joint Declaration of Byron J. Colley and Tonita Davis

Byron J. Colley and Tonita Davis, hereby declare as follows:

1. We are the owners of Beach TV Properties, Inc., a Florida corporation and an applicant for a new television broadcasting station on Channel 46, Panama City Beach, Florida. The file number of the application is BPCT-910825KE. The application, and a mutually exclusive application (File No. BPCT-910617KE) filed by Sunkissed Broadcasting, Inc., have been designated for a consolidated comparative hearing before Administrative Law Judge Joseph P. Gonzalez in MM Docket No. 92-307. Both parties have filed their notices of appearance.

2. Beach and Sunkissed have entered into an Agreement whereby Beach has agreed to reimburse Sunkissed for a portion of its reasonable and prudent application preparation and prosecution expenses and in exchange therefor, Sunkissed has agreed to dismiss its mutually exclusive application. Beach has also agreed that if it decides to assign its unbuilt construction permit it will afford Sunkissed the first opportunity to offer to acquire such authorization.

3. A copy of the Agreement settling this hearing is attached to the Joint Request to which this Joint Declaration is attached. This Agreement is the only agreement between Beach and Sunkissed. There are no separate oral or written agreements or understandings.

4. No monetary consideration, other than the consideration recited in the Agreement, is being paid to Sunkissed or to anyone associated with Sunkissed by Beach or by declarants. The only consideration being paid or promised to Sunkissed is as set forth in the attached Agreement.

5. Approval of the Agreement and grant of Beach's application would be in the public interest because it would hasten the introduction of a new full service television broadcast facility in Panama City Beach, Florida, which does not presently have a local full service station. Further, approval would conserve the resources of the Commission and applicants who otherwise would have to expend time and effort in the further prosecution of their applications.

6. The Beach TV Properties, Inc., application was not filed for the purpose of entering into a settlement.

I declare under penalty of perjury that the foregoing statements are true and correct. Executed this day of April 1993.

Byron J. Colley

I declare under penalty of perjury that the foregoing statements are true and correct. Executed this day of April 1993

Tonita Davis